

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 32402 of 2006(G)

PETITIONER:

**FANCY GEORGE, MEKALATH HOUSE,
PATHAMPUZHA P.O., KOTTAYAM DISTRICT.**

**BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL**

RESPONDENTS:

**1. POONJAR THEKEKARA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
POONJAR THEKEKARA P.O., KOTTAYAM DISTRICT.**

**2. SECRETARY,
POONJAR THEKEKARA GRAMA PANCHAYAT,
POONJAR THEKEKARA P.O., KOTTAYAM DISTRICT.**

BY ADV. SRI.ASOK M.CHERIAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. M. JOSEPH, J.

W.P.C. NO. 32402 OF 2006 G

Dated this the 26th June, 2007

JUDGMENT

Petitioner challenges Ext.P3 dated 30.11.2006 and seeks a direction not to proceed further against the petitioner pursuant to Ext.P3 order dated 30.11.2006 issued by second respondent. A declaration is also sought that the petitioner is entitled to get the benefit of the proviso to Section 220(b) of the Kerala Panchayat Raj Act, 1994. By Ext.P3 which is styled as a Notice dated 30.11.2006, there is a direction to demolish a portion of the construction made in alleged violation of Section 220(b) of the Act. Of course, it is also stated that if the petitioner seeks to submit anything, she may do it either personally or through an agent, and opportunity of personal hearing is afforded.

2. I heard the learned counsel for the petitioner and the learned counsel for the respondents. Counsel for petitioner would submit that there cannot be any dispute that Section 220 (b) will not apply to the construction made by petitioner. He

relied on Ext.P6 dated 13.2.2007 issued by the Secretary of the Panchayat stating the roads which are included in the Panchayat Road Register. According to him, the construction in question is not made on any side of the notified road. It is the case of petitioner that the Panchayat has not notified the road in question, namely Pathampuzha - Mannam Road in the Gazette under Rule 3 of the Kerala Panchayat Raj (Manner of Publication of Notification or Notice) Rules, 1996. He relies on the decision of this Court in Thomas Paul v. State of Kerala (2007 (1) KLT 267). Petitioner also contends that there is discrimination practised and that she has also given details of the persons who have made constructions in violation of Section 220 (b) of the Act even within the three metre rule and no action has been taken against them. Petitioner would contend that the action against the petitioner is politically motivated and the petitioner was singled out for hostile discrimination. She would also contend that even though Ext.P3 is styled as a notice, there is an order to demolish. Petitioner has also got a case that in

terms of Section 220 (b) as it stands, the veranda in question will not violate Section 220 (b). It is also pointed out that the building was numbered only after getting the undertaking and consent letter from her that she shall demolish the veranda on her own expense in case the said portion of the land is required for the development under the Town Planning Scheme.

3. A Counter Affidavit has been filed to which the petitioner has filed a Reply Affidavit also. Counsel for the Local Authority pointed out that Ext.P3 is only a show cause notice and it is made very clear that the petitioner will be afforded an opportunity of being heard. He would also submit that even though there is a statement that it will be demolished, it may be treated as a notice. Accordingly, in such circumstances, the Writ Petition is disposed of as follows:

Ext.P3 shall be treated as a notice. Petitioner has already filed Ext.P5 objection to Ext.P3. Therefore, the second respondent is directed to consider the objections of the petitioner, hear the petitioner or her representative, and take a

decision in accordance with law. Second respondent will also take note of the decision of this Court in Thomas Paul v. State of Kerala (2007 (1) KLT 267) when he arrives at a decision in this matter. Having regard to all facts, the decision if it is adverse to the petitioner, shall not be implemented for a period of ten days from the date of taking such decision.

K. M. JOSEPH, JUDGE

kbk.